

LINCOLN W. TIBBETTS.

MARCH 2, 1904.—Ordered to be printed.

Mr. STEWART, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 3622.]

The Committee on Claims, to whom was referred the bill (S. 3622) for the relief of Lincoln W. Tibbetts, having considered the same, beg to report as follows:

A bill identical with the one under consideration was favorably reported by the Committee on Claims and passed the Senate at the first session of the Fifty-seventh Congress. It also was included in the so-called omnibus claims bill which was favorably reported to the Senate by said committee.

The facts of the case are fully set forth in the report of your committee made in the Fifty-seventh Congress. Your committee concur in the views therein expressed, adopt said report as a part hereof and recommend the passage of the bill.

The report is as follows:

Senate Report No. 475, Fifty-seventh Congress, First Session.

Mr. STEWART, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 2037.]

The Committee on Claims, to whom was referred the bill (S. 2037) for the relief of Lincoln W. Tibbetts, would respectfully report that they have made due examination of the said case, and the evidence in support thereof, and report the same to the Senate with the recommendation that it pass.

This bill or bills of similar import have at different times been introduced in both the Senate and House of Representatives.

The Committee on Claims of the House of the Forty-second Congress, to whom was submitted a similar bill as the one now before this Committee, reported favorably on said bill and recommended its passage, accompanying said report with a statement of the facts as found by said committee.

The Committee on Claims of the Senate of the Fifty-fifth Congress, by Report No. 1126, reported adversely on a similar bill on the finding of facts substantially the same as reported by the House Committee.

The House Committee on Claims of the Fifty-sixth Congress, by Report No. 937, reported adversely on a similar bill upon the evidence then before the committee.

Although similar bills have been before both Houses of Congress, the three reports above named are the only ones that seem to have been made by the committees to whom the bills were referred.

The committee find the facts in relation to the subject-matter of the bill under consideration to be as follows:

On December 10, 1860, Capt. L. W. Tibbetts, then captain and managing owner of the brig *Tornado*, sailed from the port of New York with a cargo of 8,000 kegs of powder. At the time Captain Tibbetts took the powder for shipment it was understood that the same was for the ordinary purposes of trade, it being prior to any overtact of secession or any serious opposition to the United States Government.

In due prosecution of the voyage this vessel met with a violent storm and put into St. Thomas for repairs, arriving there January 1, 1861,

where it appears from the affidavits now on file Captain Tibbetts was obliged to remain about three months.

That while at St. Thomas Captain Tibbetts first heard of the secession of some of the Southern States, particularly Louisiana, to which he was bound. That the course was then open to him to sell a portion of his cargo to raise money to pay for repairs, whereby he could readily have earned his full freight and likewise be paid in general average for his detention at St. Thomas, or to return to New York, as he did.

It is also shown that upon the discovery by Captain Tibbetts of efforts on the part of interested parties, sympathizers of the Southern rebellion at St. Thomas, to secure the possession of his cargo of gunpowder for the use of the Southern Confederacy, and ascertaining that while his vessel was undergoing repairs there was imminent danger that his valuable cargo might be seized and hurried on board some vessel in the interests of the Confederacy, in order to prevent the same being accomplished he thereupon chartered another vessel and had transferred his cargo of gunpowder thereon, put to sea where he could protect himself, and remained there until the repairs were completed and she had left St. Thomas, whereupon he met her in the offing, transferred his cargo to his own vessel, discharged and paid for the transferred vessel, and sailed for the port of New York.

Captain Tibbetts avers that through motives of real patriotism and loyalty to the Government, knowing that the powder would be of great advantage to the South in hostilities against the Government, he would under no circumstances proceed to New Orleans, but returned to the Northern port with his whole cargo.

He therefore raised money at a high rate of bottomry, retained every keg of the powder in his possession and returned to New York, where he arrived April 22, 1861. Immediately on his arrival his vessel and cargo were seized by the United States customs officials, and soon thereafter his vessel was released, but his cargo retained by the United States Government.

Captain Tibbetts did not obtain any compensation for the use of his vessel nor for the amount expended by him for wages, provisions, and incidental expenses for the period of his voyage, and these were a total loss to him. The fact that he sailed from New York December 10, 1860, with 8,000 kegs of powder bound for New Orleans, that he put in at St. Thomas, and returned to New York April 22 is clearly evidenced by certified copies of the report and manifest of the cargo of the brig *Tornado*, of which Captain Tibbetts was master.

That the powder was afterwards returned by the Government to parties other than Captain Tibbetts is evidenced from the correspondence of the owners of the powder to the custom-house officers at New York.

There is evidence in the case tending to show that the Government at some time made a settlement with the shippers of the cargo of powder. But if Captain Tibbetts's statement is true he had no personal knowledge of such action. He was not present or consenting and, in fact, had put to sea in his vessel immediately on the releasing of the same by the Government. Therefore, all the knowledge that Captain Tibbetts has or had in regard to the final disposition of his cargo was simply on information.

Your committee therefore find, as a matter of fact:

First. That claimant cleared and sailed from the port of New York

in the brig *Tornado* on the 10th day of December, 1860, with cargo consisting of 8,000 kegs of gunpowder, duly consigned for New Orleans, La.

Second. That Captain Tibbetts put into St. Thomas with his brig disabled, for repairs, and after being detained there for nearly three months he returned with his vessel and cargo still on board to the port of New York, from whence he sailed.

Third. That on the 22d of April, 1861, upon his arrival off Staten Island, his vessel was boarded by custom-house officers who, upon learning the nature of the cargo, seized both vessel and cargo, and afterwards took both to Bergen Point, N. J., discharged the cargo and stored the 8,000 kegs of powder in the magazine then used by the Government, and thereupon released the vessel but not the cargo.

Fourth. That a condition of war existed between the States on the 22d day of April, 1861.

Fifth. That Captain Tibbetts was undoubtedly influenced by patriotic motives in not disposing of his cargo at St. Thomas, as he might have done, and was urged to do.

The inevitable conclusion from the foregoing facts is:

That the Government by seizing the cargo of powder, taking it out of the vessel, and storing it in its own magazine—no matter what disposition it afterwards made of it, so long as the cargo was not turned over to Captain Tibbetts—severed the liens that Captain Tibbetts had thereon.

Mr. Justice Blatchford, in a case reported in 108 U. S., 342, said:

The law in regard to the respective rights and liabilities of shipper and shipowner, where cargo has been carried for a part of the voyage, is nowhere better expressed than by Lord Ellenborough in the English case of *Hunter v. Princep*, in which his Lordship said:

"The shipowners undertake that they will carry the goods to the place of destination, unless prevented by the dangers of the seas, or other unavoidable casualties; and the freighter undertakes that if the goods be delivered at the place of their destination he will pay the stipulated freight; but it was only in that event, viz: of their delivery at the place of destination, that he, the freighter, engages to pay anything."

Judge Blatchford, at page 351, speaking for the court, further said:

On principle, this case falls within the rule that where the stipulations of a contract are interdependent, a defendant can not be sued for the nonperformance of stipulations on his part which were dependent on conditions which the plaintiff has not performed.

In the Tibbetts case the master was deprived of his rights over the cargo by the action of the Federal officers, and that, too, without any fault upon his own part, or on the part of the charterer. Under such circumstances the shipowner not only lost his right against the charterers by his inability to later complete his voyage, or to make an adjustment with them by redelivering it to them, but he was also deprived of his lien on the cargo for general average charges growing out of the disaster which made it necessary for him to put into St. Thomas, as well as the special expenses incurred in the preservation and care of the cargo while his vessel was being repaired. General average charges of this character are entirely familiar to those acquainted with maritime law, and they invariably constitute a lien on the cargo.

In the opinion of your committee this claim is both just and equitable and should be paid. They therefore report the bill favorably and recommend its passage.

ADDENDA.

Reference is here made to papers on file and to copies submitted herewith, as follows:

- Affidavit of claimant, executed 29th of March, 1872.
- Affidavit of Robert Porterfield, executed April 6, 1872.
- Affidavit of A. F. Higgins, executed April 6, 1872.
- Affidavit of Peter C. Cornell, executed May 11, 1872.
- Affidavit of J. H. Avery, executed February 6, 1873.
- Letter of R. Porterfield, dated New York, February 5, 1873.
- Letters from War and Treasury Departments and from assistant collector of customs at New York.
- Argument of Hon. H. C. Bliss.
- Supplemental affidavit of Capt. L. W. Tibbetts, executed December 27, 1901.
- Also itemized statement of freight and charges in connection with the outward and return voyage of brig *Tornado*, copies of which affidavit and statement are submitted herewith and made a part of this report.
- Also manifest of the cargo on board brig *Tornado*, L. W. Tibbetts, master, dated New York, December 10, 1860.
- Report and manifest of cargo brig *Tornado*, dated April 22, 1861.
- Letter of A. G. Hazard, dated April 23, 1861.
- Affidavit of Capt. Samuel Leighton, executed February 1, 1863.

AFFIDAVIT.

STATE OF MAINE, *Cumberland*, ss:

On the 27th day of December, A. D. 1901, personally appeared before me, James C. Fox, a notary public in and for said county of Cumberland, duly commissioned and sworn and dwelling within the city of Portland, county of Cumberland, and State of Maine, Lincoln W. Tibbetts of said Portland, late master of and managing owner of the brig *Tornado*, of Westport, Me., who, being duly sworn, on oath deposes and says:

That on the 29th day of March, A. D. 1872, he made a deposition before William Krebs, a notary public in and for the city and county of New York, in regard to certain facts connected with the shipment from the port of New York in December, 1860, of 8,000 kegs of gunpowder for the port of New Orleans, La., and the return of his vessel and cargo to the port of New York under conditions stated in his said deposition, which said deposition is now on file before the Committee on Claims of the Senate and House of Representatives of the United States, and that deponent now desires to supplement his said deposition by stating other facts which he then omitted to give therein in regard to his return to New York on the 22d day of April, 1861, with his vessel and cargo of gunpowder still on board.

And now deponent says that when his vessel was off Staten Island, New York Harbor, on said 22d day of April, A. D. 1861, the United States revenue cutter, with Manuel B. Hart, surveyor of the port of New York, and other customs officers and men on board, came alongside, and that the said surveyor with other officers and men boarded his vessel and examined his cargo; that when said surveyor found that deponent's vessel carried 8,000 kegs of gunpowder he immediately seized vessel and cargo and put a United States custom-house officer in charge thereof, with instruction to said officer not to permit the vessel to leave the harbor or the cargo to be interfered with until further orders from him; that on the next succeeding day deponent's vessel was taken by the United States custom-house officers to Bergen Point, New Jersey, the gunpowder taken out of her by officers of the United States custom-house and their employees, and stored by them in the arsenal or magazine at said Bergen Point then used by the United States Government, and that that was the last that your deponent saw of his cargo of gunpowder, and that of his own knowledge what disposition the United States Government afterwards made of it deponent knows nothing.

At that time the excitement was very great, not only in New York, but all over the country, and that deponent was actually afraid to object to the removal by the United States Government officers of his cargo or to the treatment he was receiving at the hands of its officers by the seizure of his vessel and cargo; that, after the cargo was removed from deponent's vessel, as above stated, the vessel was released and turned over to deponent, who immediately thereafter left New York Harbor in her; that deponent expected that at some future time the United States Government would make good to him his loss, which was wholly due to its interference with and

seizure of his cargo, and thus destroying his lien upon the cargo for freight money and expenses; that he did not understand how to proceed to secure his rights from the United States Government, and he did not attempt to try to get a settlement with it until some time in 1872, when he related all the circumstances connected with the transaction to the late Hon. James G. Blaine, who informed him how to proceed, and stated to him that he ought and would be reimbursed by Congress without difficulty.

LINCOLN W. TIBBETTS.

Subscribed and sworn to before me this 27th day of December, A. D. 1901.

[SEAL.]

JAMES C. FOX, *Notary Public*.

Remized statement of freight and charges in connection with carriage outward and return of cargo of 8,000 kegs of gunpowder in 1860-61.

Freight New York to New Orleans, as per charter party	\$3,500
Freight St. Thomas to New York	3,000
Charter of vessel for storeship while at St. Thomas, seventy days, at \$600 per month.....	1,400
Government guard for said vessel, seventy days, at \$25 per day.....	1,750
Incidental expenses at St. Thomas.....	300
Total.....	9,950

When this vessel under my command arrived in New York, in April, 1861, hostilities had commenced between North and South. Before I had time to secure a lien on the cargo for freight, the custom-house authorities of New York seized the powder, took it out of my possession, and I was unable to recover any freight or recompense of any kind for this period of about six months.

LINCOLN W. TIBBETTS,
Formerly Master of the Brig Tornado.

